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## James B. Guthrie v. Selma T. Guthrie

Reply Brief 1976-SC-0253

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**KYSC1976-SC-0253-04**

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# REPLY BRIEF

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# SUPREME COURT OF KENTUCKY

NO. 76-253

**JAMES .B. GUTHRIE** ..... **Appellant**

**VS.**

**SELMA T. GUTHRIE** ..... **Appellee**

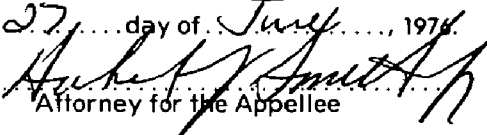
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## RESPONSE BRIEF FOR APPELLEE

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Attorneys for Appellee

Copies of this brief have been served in accordance with RSP 1.250 and CR 5.02 upon the trial Judge, Honorable Thomas W. Hines and the present Judge, Honorable J. David Francis, and upon counsel for the Appellant, Honorable J. Marshall Hughes and the Honorable B. G. Davidson.

This 27 day of July, 1976.  
  
Attorney for the Appellee

**FILE**  
**JUL 30 1976**  
MARION LAYNE COLLIER  
CLERK  
SUPREME COURT

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**SUPREME COURT OF KENTUCKY**

NO. 76-253

**JAMES B. GUTHRIE .....Appellant**

**VS.**

**SELMA T. GUTHRIE .....Appellee**

**RESPONSE BRIEF FOR APPELLEE**

**MAY IT PLEASE THE COURT:**

**QUESTION TO WHICH BRIEF IS ADDRESSED**

This Response Brief is addressed to the sole question:  
In what way did the trial court award to Appellee excessive maintenance?

**ARGUMENT**

Appellant’s Brief asserted that the Appellee, Selma T. Guthrie, should go out and get a job and support herself.  
She is 56 years of age and the Court found that she was “in poor health, unemployed, and not qualified for any kind of work, which would provide the necessities of life due to her age and physical condition.” TR-294

The record unquestionably supports this finding by substantial evidence.

The Appellant maintains that she "did factory work." This was many years ago when she worked in a factory that required arduous hours of standing and bending. Appellant knows full well that Selma T. Guthrie would not at this time be able to do that kind of work or any comparable "factory work" at her age and in her condition of poor health. What factory would employ her?

Appellant says that she worked with Avon Cosmetics. This involved much walking, knocking at doors, and many hours at very small pay. It is obvious that she could not do this type of work now, and if she could, it would provide little of the absolute necessities of life.

The Appellee has given many years of her life in carrying on the duties of a housewife and mother in many widely scattered parts of the world wherever her husband was sent by the Army during peace time. These were hard years and she made no complaint. Now she is in the latter part of her life, in poor health, and without income. The Appellant has the benefit of his Army pension, which she helped him earn, and he does not want to share it with her.

Let it be remembered that this divorce was Appellant's idea as was the equal division of the pension (See the testimony of his first attorney, Mr. James S. Secrest).  
TR-208

Appellant speaks of "need". Her need is the same as his - food, clothing, shelter, and medical attention. His medical bills are paid through the Veteran's Administration. She has no such relief. It is common knowledge that it takes

much money to meet the bare cost of staying alive. Appellant complains that he only has \$41.29 after each paycheck. Regardless of the truth of this assertion, it may well be said that Mrs. Guthrie has nothing left over after she pays her living expenses.

The trial court weighed all of the hard facts of life that Mrs. Guthrie must face, as well as the facts of life with respect to Mr. Guthrie. While she helped Appellant earn his pension and Veteran's benefits she has none of her own, as Appellant wrested these rights from her when he divorced her, leaving her without the pension income or Veteran's rights to which she would have been entitled had Appellant seen fit to permit her to live out the few remaining years of her life as his wife or widow. Appellant's Brief speaks of the fact that Appellee was, according to the Appellant, "still the beneficiary of a \$10,000 life insurance policy". The trial court was not impressed with this argument since he knew that she remained a beneficiary under that policy only as long as the Appellant wished, as he had, and still has, the power at any time to change the beneficiary. There is much doubt as to whether she still is the beneficiary of that policy, in view of the hatred he has flagrantly shown toward her and the bitterness engendered by her unwillingness to submit to his desire to make her live in poverty during her old age. This is the condition he would like to impose upon her.

Appellant is 69 years of age and, perhaps, in worse health than Mrs. Guthrie. The chances of his demise prior to her death are not remote. In such event, she would have no widow's pension, no home, no income, and no hope.

Appellant's Brief refers to a so-called "\$17,000" jade piece. The proof shows that this was acquired for a \$45.00 price and was lost long before the separation of the parties. These people never owned anything expensive in their lives. Had this article been worth anything in value, they would have kept it in a lockbox. Instead, it was shuffled around in inconspicuous places around the house until it was simply lost or misplaced along with other souvenirs that they gathered during the course of their married life and then lost periodically. TR-240

The trial court was not impressed with the assertion that this jade piece was worth any money nor impressed with the Appellant's claim of exaggerated value of furniture, which the parties voluntarily divided at the time of the separation.

The findings of the trial court are well supported by ample proof. We again rely on Rule 52.01 in the cases cited in our original brief, which hold that the findings of the trial court will be upheld unless clearly erroneous. The Court has unanimously held that "it is the province of the trial court to find facts and evaluate the testimony." (See *Stice vs. Stice*, 436 S.W. 2nd 62; *DeSimone vs. DeSimone*, 392 S.W. 2nd 68).

## CONCLUSION

It is respectfully submitted that there was no abuse of judicial discretion by the trial court in this case. An abundance of evidence existed to support the conclusion that the decision was just, fair in all respects and clearly provided equitably for the needs of both parties. A division



of the pension income recognizes the urgency of equally providing for the necessities of life for both parties. The judgement of the trial court deserves to be upheld in the interest of justice.

This ....27..... day of .....June....., 1976.

**Respectfully submitted by:**

**MILLIKEN AND MILLIKEN**

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Attorneys for Appellee



G. D. Milliken, Jr.